

North Carolina
Code
Commissioners
Report

1870

Digitized by the Internet Archive
in 2008 with funding from
Microsoft Corporation

REPORT OF THE CODE COMMISSIONERS.

RALEIGH, March 12th, 1870.

*To the Hon. THO. R. CALDWELL,**Lieutenant Governor and President of the Senate :*

SIR: The Commissioners of the Code have the honor to report to the General Assembly that they have nearly reached the end of the labors which were imposed on them by the Convention of 1868.

The constitution adopted by the people in that year made radical changes in the fundamental law in some most important particulars.

1. It abolished courts of equity, and all difference in the forms of actions.

2. It prohibited the old and introduced a new system of punishment.

3. It created a number of public officers whose duties had to be defined.

4. It required that corporations, both municipal and private, should, except in peculiar cases, be chartered by general laws.

5. It essentially altered the common law relations of husband and wife, by making all the property of the wife separate.

Such comprehensive changes in accustomed law have rarely been enacted in so short a time. Some of them at least may be justified upon the ground that a great revolution had occurred, as a result of which society stood on a new basis and required different laws from those which were appropriate to the stage which had perished. Others must stand upon their intrinsic merits. What these are it is no part of our duty to

decide; time alone can give a positive answer. For the changes made by the constitution the Commissioners are no wise responsible; we took them as accomplished facts; and our duty was as skillfully and as prudently as we could to bring the law of the State into harmony with them. It was evident that until that was done, there would exist an anarchy and confusion of private rights scarcely compatible with peace and order and incompatible with public happiness or prosperity. The old system of procedure in civil actions was abolished; and until a new one was supplied, there were no means by which a private controversy could be determined, or an acknowledged right enforced; the State was practically without law.

Sensible of the danger arising from this state of things, in a very few months the Commissioners presented to the General Assembly a Code of Civil Procedure which met your sanction. It was, we humbly conceive, the best that could have been framed in obedience to the constitution. At first this code was unacceptable to the bench and to the bar, as all changes must be, but we believe it has gained in the favor of both. For over eighteen months justice has been administered under it in civil actions without complaint. While we ourselves candidly admit its imperfections in some respects, we think its greatest enemies will admit that it has some merits over the former system. However, whatever may be the merits or demerits of the new system, all calm men must admit that a return to the old is impossible. The only resource is to improve and amend the new. We believe that duty can now be much better performed by the Courts than it is likely to be by the Legislature, and therefore, with the exceptions of some corrections of misprints and clerical mistakes, we have not presented to the honorable General Assembly any proposals for a substantial amendment of the Code of Civil Procedure.

As an essential complement to the changes made by the Constitution, we have presented to your honorable body at this session a Code of Crimes and Punishments. The subject

is one of great importance ; the lives of men may depend on a phrase. We have given it great consideration, but in view of its importance we do not recommend to your honorable body its adoption at the present session. We prefer that it shall await the quiet and repeated consideration of those best competent to pass on its merits.

We have also at this session submitted a Code of Criminal Procedure. Generally, it is a mere digest of the present law as shown by our statutes or decisions ; the few changes made in the present law we think important. We recommend the early passage of this most important statute. We have submitted it to the bar of the State and so far have received a criticism upon one point only, viz: the authority of the Solicitor to enter a *nol. pros.* The Solicitors desire to retain the authority. The opinion of the bench and the bar is against them, and confirms our proposition in that Code. We have therefore to ask the consideration of your honorable body to that Code, and we think we are justified in saying it meets the approval of all competent judges.

The bill which we prepared regulating the duties of the various public officers throughout the State, met your approbation and is a part of our law.

These acts, with many others, such as those concerning the settlement of the estates of deceased persons, guardian and ward, landlord and tenant, fences, draining low land, &c., prescribing just rules and convenient modes of procedure in all these important subjects, form a body of law, the enactment of which will, for at least a century to come, mark an era in our history. We may be permitted to believe that this body of law, by the certainty and economy it has introduced into the administration of justice, has saved, and will save, millions of dollars which would otherwise have been spent in unnecessary legislation, and will go far to compensate the people of North Carolina for all their losses of property in the late disastrous war. This General Assembly may appeal to those statutes as a vindication from any charges that may be made against it because of prolonged and expensive sessions.

It is said of a certain obscure and badly drawn English statute (of frauds,) that every line of it has cost the people of England a million of pounds in getting it interpreted by the courts. If this General Assembly had done nothing else but to enact those statutes, we feel at liberty to say that in our opinion, the work would have been worth the whole cost of your sessions. It will be a source of pride to you, in which we may be permitted to share, that your names are forever connected with such just and useful legislation.

But two of the great subjects embraced within our duties remain untouched : a general corporation law, and one defining the powers of married women over their separate property. Besides that the Constitution positively commands the first, its necessity is obvious. Much of the time of the General Assembly at every session is occupied, at vast expense to the people, in considering special acts relating to private or other corporations, which would be saved by a general act. As to the second subject, probably few have as yet realized the dangerous uncertainty and confusion of the law at present affecting it. No one can say, with certainty, what contracts a wife may or may not make, nor how far her husband may be bound by her acts. We propose to present, for your consideration at your next meeting, bills on these two important subjects. We shall also have ready then, to submit to you, the complete compilation of all the laws respecting internal improvements, in which the State has an interest, which we were directed to prepare by a resolution passed at your last session, but which, unfortunately, did not come to our knowledge until too late to prepare it for your present session. We shall also submit to you, at that time, a codification of the whole statute law of the State, arranged in convenient form for reference, and making a single volume about the size of the Revised Code. When this shall be done our labors will have finished.

We remain, very respectfully,

Your obedient servants,

WILL. B. RODMAN,
V. C. BARRINGER,
A. W. TOURGEE.

LAW LIBRARY
UNIVERSITY OF CALIFORNIA
LOS ANGELES